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# CITY OF NEWTON, MASSACHUSETTS

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## CONSERVATION COMMISSION MINUTES

April 29th, 2010

Beginning at 6:30 p.m.

City Hall, Room 209

### Conservation Commission Management Plan Meeting

**Meeting called to order at 6:38 p.m.**

**MEMBERS PRESENT:** S. Lunin, D. Green, N. Richardson, J. Hepburn, R. Matthews, Jane Sender

**MEMBERS ABSENT:** Ira Wallach, D. Dickson

**MEMBERS OF THE PUBLIC:** See attached sign-in sheet

**Meeting:** Discussion centered around invasive plants and how best to remove them.

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### Conservation Commission Regular Meeting and Wetland Filings

**Meeting called to order at 7:36 p.m.**

**MEMBERS PRESENT:** S. Lunin, Vice-chair and Acting Chair, N. Richardson, J. Hepburn, D. Green, Jane Sender; R. Matthews arrived at 7:50 p.m.

**MEMBERS ABSENT:** Ira Wallach, D. Dickson

**MEMBERS OF THE PUBLIC:** See attached sign-in sheet

**\*Taken out of order.**

**\*Countryside School Wetland Alteration -Removal of vegetation** – Eric Olson & Emily Ostrower, Principal, Countryside Day School propose to remove invasive vegetation from bordering vegetated wetland adjacent to Sawmill Brook;

**Report:** Letter from Eric Olson (sent individually to Commissioners) and letter from Emily Ostrower. Letters from children not included in packet. Nothing new submitted. Regardless of how well-intentioned, the regulations do not seem to permit alteration of a wetland area without filing a NOI and issuance of an Order of Conditions. See activities subject to Notice of Intent Fees at 310 CMR 10.03(7)(c)1.d. "Resource improvement allowed under 310 CMR 10.54(4), other than removal of aquatic nuisance vegetation, as allowed under 310 10.53(4) and see 310 10.53(4), "...the issuing authority may issue an Order of Conditions for projects which will improve the natural capacity of a resource area(s) to protect the interests identified in M.G.L. c. 131, Sec. 40..... Such projects include, but are not limited to, the removal of aquatic nuisance vegetation...."

**Meeting:** Emily Ostrower, Principal, described interest in removing invasive vegetation and using bordering vegetated wetland adjacent to South Meadow Brook as focus for environmental study. Students presented

### Conservation Commission

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essays. Eric Olson said there is great degradation of the wetland and wants to install planks or bridges in high water areas. It would be a 1.1 acre wetland experiment. Commission members indicated the principal should file a Notice of Intent with a map and clearly drawn plans. Dan will check to see whether the school is exempt from filing fees. To file for the May 27<sup>th</sup> meeting, filing and plan needed by May 11<sup>th</sup>. Eric Olson asks for source for state requirement to file to remove plants. Planner will ask in conjunction with clarification on whether a conservation commission needs to file for work it initiates.

**46 Allen Ave. –Beethoven Brook-NOI** – CONTINUED TO April 29th MEETING. DPW Maintenance on clogged pipe was followed by excavation of stream channel, then placement of concrete blocks along sides of stream and rip-rap altered stream bank character;

**Report:** Large amount of material in packet from DPW. Currently, I think CC could find that “Beethoven Brook” is jurisdictional (protected under the WPA) stream from 39 Beethoven (house with bordering vegetated wetland) to Beacon Street where stream enters piped Cold Spring Brook. Everything upstream is non-jurisdictional. See Appendices to 1983 revisions to 310 CMR 10, V. ISSUES OF MAJOR CONCERN, E. Definition of “Stream,” “intermittent streams are included within the definition, except those portions that are upgradient of all wetlands. (See 310 CMR 10.04, definition of stream.)” However, Utilities is seeking soil hydrologist to (re) examine bordering vegetated wetland at 39 Beethoven to see if they can refute the prior determination of bordering vegetated wetland, and have the length of the channel declared a drainage ditch and non-jurisdictional. Commission should ask applicant to continue again, if the applicant is proposing to bring in more info.

**Meeting:** John Daghljan, Associate City Engineer present to discuss project. A soils scientist will be asked to evaluate the area of 39 Beethoven as part of the evaluation of whether this ditch/stream is jurisdictional. Applicant asks to continue to the May 27<sup>th</sup> meeting.

**Nonantum Rd. Daly Skating Rink – NOI** –Boston Academy of the Sacred Heart, Inc., which leases rink from DCR wishes to add a 4,805 sq. ft. addition in riverfront and partially in buffer to bank of the Charles R.;

**Report:** Using latest figures, the proposed addition is 3,031 sf. Applicant counts proposed building over both pavement and gravel (says no topsoil) as re-development = 2143 sf, and 888 sf as new development (i.e., replaces grass or other vegetation). There is proposed mitigation consisting of planting area, mostly between the proposed addition and the river, of approximately 9310 sf (far more than twice the increase in impervious area), which would be loamed and planted with a conservation seed mix (herbaceous plants), and “outlined” by a total of 60 native shrubs. The planting area also offers a partial restoration of a vegetated buffer between the work and the top of bank (see requirements under 10.58(4)(c)3, 10.58(4)(d). The herbaceous vegetation would be mowed annually. Walking paths (not counted in the total of 9310 sf, mitigation, above) would underlain with geotextile cloth in some areas, for stability. Also, because of prior fill in area and high water table, current proposal is to drive piers into substrate and fill around foundation and raise grade to hold a storm water re-charge chamber for roof runoff from new roof area. This would reduce need for excavation (and de-watering). Present plan for de-watering is not deemed adequate if standard foundation for addition is constructed below grade, but may handle de-watering for installation for re-charge chamber. If the Commission agrees applicant meets regulatory requirements,

**Recommended conditions:**

- 1) Dock is unsafe for public use and a potential navigation hazard. No Certificate of Compliance shall be issued for this project until the dock is repaired or replaced to the satisfaction of the Conservation Commission. However, the repair or replacement may require a separate filing, and no work shall be performed, including removal, without prior review by the Commission or the Senior Environmental Planner.
2. Wooden bench near bank is similarly unsafe, and shall be removed or replaced prior to issuance of a Certificate of Compliance.
- 3) Applicant shall schedule a pre-construction site meeting with contractor, Sr. Planner and project engineer prior to the start of work. Erosion and sediment control measures, including de-watering measures, shall be in place and approved by Sr. Environmental Planner prior to the start of work.
- 4) No haybales shall be used for erosion and sediment control. Straw bales or compost tubes, or similar seed-free product may be used, subject to prior approval by the Sr. Environmental Planner.

**Meeting:** John Giangregario, DAIQ Architects, Scott Smyers, Oxbow Associates, Ted Carey, Barbara Ropersen, and Terry Foster, Newton Country Day School, and Peter Richardson, Green International, were present for the project. A revised mitigation planting plan with mowed paths was presented. Mitigation for existing erosion from the gutters will only add rip-rap on the east end of the building. The area for stock-piling also needs to be larger or further from bordering vegetated wetland. Sr. Planner and memo from Engineering still do not think de-watering plan is adequate for the site and the scope of work. P. Richardson, Green International says it is only needed for a perimeter foundation and that the plan should be adequate. **Motion by D. Green to approve Order of Conditions with standard conditions, a dewatering plan acceptable to Sr. Environmental Planner, and recommended conditions (above) 1, 3, and 4. Second by R. Matthews.**

**Vote: All in favor. Motion passed.**

**CSX Vegetation Management Plan RDA** –ROW spraying of herbicides in riverfront and buffer to bank of the Charles River, in bordering vegetated wetlands, and possibly floodzone, and in an area proximal to a public drinking water supply. Awaiting site visit to confirm wetland resource area(s);

**Report:** Site visit on April 14<sup>th</sup> with Steve Herzog, consultant with AMEC and employee of CSX. River is still very high, but no sign of skunk cabbage or red maples on bank to indicate bordering vegetated wetland. Flood zone is exempt. Recommend commission accept delineation of top of bank and that there is no bordering vegetated wetland present, which makes work exempt so long as work performed outside of waterway (spraying stops 10 ft either side of river).

**Meeting: Motion by D. Green for negative determination #2 and #3. Second by N. Richardson. Vote: All in favor. Motion passed.**

**134 Vine St., RDA – Requesting continuance to April 29th.** Landscaping in the 100 ft buffer to bordering vegetated wetland. Awaiting revised planting plan; Requesting **continuance** to May 27<sup>th</sup>;

**Report:** Owner of 134 Vine asks to continue to May 27<sup>th</sup>.

**Meeting:** The hearing is continued to May 27<sup>th</sup>, 2010.

**116 Louise Road – Violation** and trespass- Owner to discuss putting bounds on property border and restoration/plantings on Hahn Brook Conservation area;

**Report:** Commission dealt with same issues on this property ~ 4 years ago, and owners planted 5 trees, agreed to plant native “edge” and mark property boundary. Five trees planted and surviving, but other work not done and area still being treated as lawn on City land in buffer zone.

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**Meeting:** Mary Christakis and Chris Christakis, owners, were present and said they had been mowing and using this area prior to its acquisition by the City. The initial Violation Notice was in 2004. The Commission refers this matter to the Law Department to clarify boundary ownership issue. The Commission asks the Law Department to confirm that owners have provided documentation that they have been maintaining this area since prior to acquisition by the City, and for the Law Department to communicate with Conservation by April 27<sup>th</sup> their evaluation of the situation.

**23 Marla Cir. RDA** - Construction of a wood deck extension at more than 50 feet from top of bank of Saw Mill Brook within the 100 ft buffer zone and the 200 foot riverfront area.

**Report:** Proposed deck extension 65 ft from the bank of Sawmill Brook. Work is covered under exempt minor activities, and some consultants would balk at filing a Request. Originally filed as NOI, but I advised only a RDA is needed. Erosion and sediment control proposed (haybales & silt fence). I recommend a negative determination silt fence only, or, if holes for pilings are hand-dug and all excess dirt removed, may not need any E&SC.

**Meeting: Motion by R. Matthews to issue negative Determination of Applicability #2 and #3, and require no sediment control but hand digging of holes for pilings/supports for deck. Second by J. Hepburn. Vote: All in favor. Motion passed.**

**49 Clyde St. RDA** – Construction of a 75 square foot addition within the 100 foot buffer to bank of Laundry Brook;

**Report:** If any excavation is involved, the site needs a silt fence, properly installed and inspected by Env. Planner, as well as silt sac under nearest catch basin which lies directly over Saw Mill Brook as it passes through a culvert. Work is technically out of riverfront (because of culvert) and is out of flood zone, but lies within the 100 ft buffer to bank. Recommend negative determination on the work with above conditions.

**Meeting:** Toby Huff, applicant and contractor was present, and described the project as a small bump-out addition. Mr. Huff says all excavated soil will be trucked to off-site storage area and he will only return what is needed to back-fill around new foundation. **Motion by D. Green to issue a negative determination #3 with erosion and sediment control installed subject to approval by Sr. Environmental Planner prior to start of work. Second by R. Matthews. Vote: All approved. Motion passed.**

**100 Berkshire Rd. RDA** – Construction of a 500 square foot addition and installation of below-grade cistern within the 100 foot buffer to bank of Bullough's Pond and the 100 foot buffer to bordering vegetated wetland;

**Report:** Proposed work is demolition of 230 sq ft of existing deck and construction of an addition of 500 sq ft, a portion of which is within the outer part of the 100 ft buffer zone to bordering vegetated wetland (10.55) and top of bank (10.54) to Bullough Pond, and installation of an underground cistern. I do not know if cistern is for re-charge – it may be for watering. I recommend the Commission issue a negative determination on the work (without confirming the wetland resource delineation, which is not flagged in the field and I have no means of verifying), providing the following conditions are met: 1) Appropriate erosion and sediment control be installed (none shown on plan) and approved by Sr. Planner prior to the start of work;

**Meeting:** Jonathan Edlow, owner, was present to present the project. He said the cistern is to capture rainwater for irrigation. Commission asked Mr. Edlow to note on the plan that the wetland line is not verified and [Sr. Planner to check box 2b on the Determination of Applicability. **Motion by D. Green to issue negative Determination #3, provided that erosion and sediment control is approved by Planner prior to the start of**



work, and on plan it says that wetland delineation is not verified. Second by R. Matthews. Vote: All approved. Motion passed.

**46 Kingswood Rd. NOI** – Construction of two additions at 46 Kingswood Road, a proposed walkway and pergola, within the 200 foot riverfront area to the Charles River, totaling 68 square feet (?) increase in impervious area, with mitigation plantings;

**Report:** Entire lot within the 200 ft riverfront area. Project includes tearing down an existing sunroom and constructing a 15 ft x 17 ft new addition and a 14 ft by 16 ft deck in the rear over “permeable” pavers. The addition will be located on an area presently patio. Also, small entrance addition proposed in front of house with walkway. Work nearest river falls under 10.02(2)(b)1.e. Work in front adds small amount of impervious area. No alternatives analysis required. Mitigation proposed.

**Meeting:** Allison Sharma, owner, and Karon Catrone, wetland scientist, were present to describe project. There is some increase in impermeable surface, as, over time, permeable pavers become impermeable. Planner notes mitigation plantings offered, but too many plants for designated area – would accept fewer plants. **Motion by R. Matthews to issue Order of Conditions with standard conditions, and mitigation planting doses not need to meet amount on plans but should be four (4) or more spice bushes that survive two years. Second by D. Green. Vote: All in favor. Motion passed.**

**358 Fuller St. (BBCC) - Emergency Certification**-Demolition ordered by ISD for safety reasons. Needs ratification;

**Report:** Cottage has been in bad shape for some time. It is not included in any other Order of Conditions. I conducted a site visit with the BBCC General Manager Steve Cummings and we discussed the amount of disturbance to soils (probably small) and placement of erosion and sediment control (preferably silt fence) between the wetland and the cottage. Emergency Certification requires after-the-fact RDA.

**Meeting:** Richard Kosian, Beals and Thomas, was present for Brae Burn Country Club. He said the would planned is only enough to alleviate the emergency (taking the building down and re-stabilizing the site temporarily) and then the Country Club will file a Request for Determination for additional work. Five (5) trees need to be removed, two of which are in the buffer zone – this is not covered by the Emergency Certification. Planner would like stockpiled soil and gravel and dumpsters in lower parking lot near the water removed. **Motion by D. Green to ratify the Emergency Certification, with work allowed to demolish the building, remove material from the buffer zone and dispose of legally, once erosion and sediment control has been approved by Planner, and owner shall file an after-the-fact RDA with a plan for long-term stabilization, and no additional material in the buffer zone. Second by R. Matthews. Vote: All in favor.**

### Violations:

**34 Farwell St. Violation** – EO issued to Angelo Paolini and D.C.R. to remove rear house by April 15<sup>th</sup>, 2010 and submit as-built and paperwork for Certificate of Compliance on prior OOC.

**Report:** EO issued, deadline passed, and house not removed, no NOI for other unpermitted work, and no paperwork to verify compliance with old Order. Letter from new attorney for Mr. Paolini, from DCR.

**Meeting:** Jennifer Rushlow and Alan Ciccone, Jr. present. The Commission referred this matter to the Law Department;

**35 Kingswood Rd.** – Will re-check lowbush blueberry bushes spring of 2010;

**Report:** Bushes are still alive, although some have popped up out of the ground (not planted correctly?) and there is a wire fence attached to metal fence poles stretched across the bank area with no 6 inch clearance underneath.





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Meeting visit by Anne found all bushes present and alive. New fence is up with no six (6)-inch clearance as required by DEP. J. Sender says the fence is up all summer and only removed in winter. No action taken.  
**15 Harwich Rd.** –Mr. Spellman is working with a consultant to bring site into compliance;  
**46 Farwell St.** – We hope to resume mitigation activity at Norumbega next week.

## Certificates of Compliance

**64 Kingswood Rd.** – OOC expired in 2006. As-built and certification letter received. Owner has now removed dock and brush piles.

**Meeting: Motion by R. Matthews to issue Certificate of Compliance. Second by D. Green. Vote: All in favor. Motion passed.**

**40 Rochester Rd.** –As-built and certification letter received. Recommend issue COC.

**Meeting: Motion by R. Matthews to issue Certificate of Compliance. Second by D. Green. Vote: All in favor. Motion passed.**

**27 Selwyn Rd.**–As-built and certification letter received. Recommend issue COC.

**Meeting: Motion by R. Matthews to issue Certificate of Compliance. Second by D. Green. Vote: All in favor. Motion passed.**

## Announcements & General Business:

**Open Space Plan – Report – Anne**

**March 25th, 2010 Meeting Minutes** for approval;

**Meeting: Motion by J. Hepburn to accept minutes of March 25<sup>th</sup>. Second by D. Green. Vote: All in favor. Motion passed.**

**Discussion of Invasives Removal – Policy** – I have concerns that the “Invasives Task Force” under Eric Olson has been/may continue to work in wetlands and buffer zones without getting prior permission or delineations. How do members feel about this? Minimal requirements of 1) sketch plan, 2) summary, and 3) get areas flagged if any chance wetlands near were not followed last year. A series of walks w/Newton Conservators is planned starting in a couple of weeks, and I have received no new plans, and no requests to flag or locate wetlands to avoid.

## Updates:

**MBTA Green Line at 40 Glen Ave.**– RDA, after the fact for repair work and installation of new drain line in easement; Emergency Certification required them to file by April 13<sup>th</sup>, but they asked for more time, i.e. until May 11.

Motion to adjourn. Vote: All approved. Meeting adjourned at ~10:40 p.m.

Respectfully submitted,

Anne Phelps, Sr. Environmental Planner

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